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April 29, 1999

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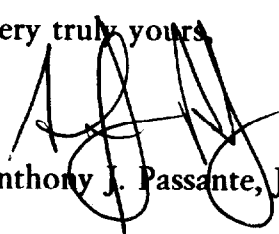
Magalie Roman Salas
Office of the Secretary TW-A306
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: MM Docket 99-25

Dear Ms. Salas:

Submitted herewith for filing, on behalf of San Diego Public Radio, are an original and four (4) copies of its Comments in connection with the referenced Rulemaking Petition.

Very truly yours,


Anthony J. Passante, Jr.

AJP:abm
Enclosures
cc: Client

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Creation of a Low)	MM Docket 99-25
Power Radio Service)	
)	RM-9208
)	RM-9242
)	
)	
)	

COMMENTS OF SAN DIEGO PUBLIC RADIO
TO NOTICE OF PROPOSED RULE MAKING

San Diego Public Radio, a California Not for Profit Corporation (SDPR), by its attorney, pursuant to 1.4, 1.45 and 1.405 of the Commission's Rules, and pursuant to the Commission's Notice of Proposed Rule Making of January 28, 1999, hereby submits its Comments to the Commission's proposal to establish rules authorizing the operation of new, low power FM (LPFM) radio stations.

1. SDPR favors the establishment of LPFM service and believes that the adoption of the Commission's proposal, in whole or in part, would foster freedom of expression of

information for non-mainstream radio programming. Attached to this Comment is SDPR's proposal for the establishment of LPFM radio broadcasting in the form of its "APPLICATION FOR LICENSE TO OPERATE EXPERIMENTAL MICRO RADIO STATION ON AN INTERIM BASIS."

2. While SDPR is cognizant of the Commission's statements in its Notice that no new applications for micro-radio broadcasting service will be considered at this time, SDPR's application sets forth its proposal, which is much like that discussed by the Commission in its notice, and provides technical specificity as to how such broadcasting could be produced without fear of potentially destructive interference with existing stations.

3. SDPR's proposal for LPFM service is based on the realistic premise that the existing Commission operating requirements for second adjacent channels, as set forth in the Commission's FM Rules, are no longer required, due to the improvements in microelectronics used by FM radio stations and FM radio receivers today.

4. For example, older radios, prior to the Commission's adoption of the existing Table of FM Allotments in the early 1960's, operated with the older technology using tubes. Today, transistors and microchips have made tube radios obsolete. Indeed, Intel has indicated that it is now possible to place several million transistor equivalents on a single chip. Microelectronics has changed the world and specifically the way we communicate in the world. Unfortunately, the advantages of microelectronics and the vast potential economic benefit of this technology has not been incorporated into the Commission's formulation of second adjacent channel spacing requirements.

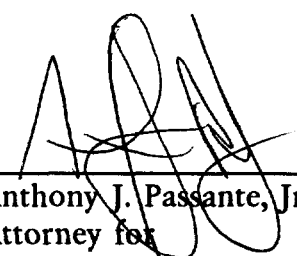
5. Real world experience with more stable transistor and microchip technology

indicates that the second adjacent channel spacing requirement adopted so many years ago, is no longer necessary to protect existing stations from harmful interference. Accordingly, SDPR's proposal, contained in its attached Application, establishes LPFM service on such second adjacent channel stations (assuming that no harmful interference is caused to any existing broadcast stations), with each such station operating with an effective radiated power of under 100 Watts.

6. Advantages of such service include increased opportunities for targeting programming catering to specific niches of non-mainstream broadcasting. This new system can work to serve the public interest by allowing those now considered "pirates" to become legitimate licensed broadcasters serving their communities by putting the much needed local element back into broadcasting.

7. It is respectfully requested that the Commission carefully review the attached Application and consider it part of SDPR's Comment to the referenced Notice of Proposed Rule Making.

DATED: April 29, 1999



Anthony J. Passante, Jr.
Attorney for
SAN DIEGO PUBLIC RADIO
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(619) 236-9937

APPLICATION FOR LICENSE TO OPERATE EXPERIMENTAL MICRO RADIO STATION ON AN INTERIM BASIS

San Diego Public Radio, a California non-profit corporation ("SDPR"), hereby respectfully submits this application for the licensing of its experimental radio station to be known as KLAT and broadcast at 96.9 FM. SDPR requests that the license be granted on an interim basis for a period of five years in order to allow SDPR to establish that its broadcasting at low power (less than 100 watts) will not cause interference with existing stations in its broadcast area even though there is only 400 Mhz separation between it and the two stations broadcasting on either side of the FM spectrum.

I.

DESCRIPTION OF APPLICANT

San Diego Public Radio [SDPR] is a California non-profit corporation established for the purpose of operating a low power FM radio station. The corporation is duly organized and existing under the laws of the State of California with its principal place of business in San Diego County, California. The principal offices for the operation of broadcasting will be located at San Diego, California.

II.

INTRODUCTION

The purpose of this application is to obtain an experimental license, on an interim basis, to operate a low power FM [LPFM] radio station at 96.9 Mhz on the FM radio frequency in San Diego, California. This is a unique endeavor in that current FCC regulations require that there be 800 Mhz of distance separating two FM radio stations broadcasting in the same market. SDPR will prove that due to the sophistication of both radio broadcasting and radio receiving equipment today, there is no longer a need for the

800 Mhz distance between stations. SDPR proposes to broadcast at 96.9 on the FM frequency which is only 400 Mhz separation between two other radio stations [KSON 97.3 and KYXY 96.5] and will do so without interfering with those stations both of whom broadcast at much higher ERPs than proposed here. The reason SDPR is undertaking this project is to prove to the FCC that this type of broadcasting can be effective, efficient, profitable and yet not cause interference with existing licensed stations. It is the hope of SDPR that by obtaining this experimental license it will prove to the FCC that people of limited financial means and those motivated by public interest concerns can have a voice in broadcasting and that the significant capital expenditure required to obtain a standard FM radio broadcast license is effectively shutting the majority of Americans out of broadcast station ownership and thus limiting their voices.

It could and has been argued that present Commission rules are unconstitutional and effectively squelch the First Amendment Constitutional right to speak as relates to broadcasting, since current rules are not promulgated to achieve the least restrictive method of regulation, as required under the Communications Act of 1934, as amended. Although SDPR does not condone broadcasting without a license (pejoratively called pirate radio), it should be noted there are large numbers of people all across America taking to the airwaves knowingly risking fines and censure, and even criminal charges. There are many throughout America today who are willing to risk severe punishment just to be heard. For every person who is willing to take to the air with an unlicensed station, there are many more who wish to have the ability to own a broadcast station but will not risk the punishment to do it.

It is hoped that by granting SDPR an experimental license on an interim basis and allowing San Diego Public Radio to prove that it can operate a low power FM station

without interference, the FCC will eventually allow many of these would-be broadcasters and many of the so-called pirates to become legitimate licensed broadcasters serving their communities by placing the much needed local element back into broadcasting. The system can work to serve the public interest just by changing some of the rules.

III.

BACKGROUND

Since the passage of the Telecommunications Act of 1996, we are seeing a concentration of ownership never before witnessed in America. Large companies and public corporations with almost unlimited resources acquiring vast numbers of stations at alarming rates forcing the prices of stations higher and higher and severely limiting the number of voices. In the past, one company could own 6, then 12 stations nationwide and now some companies own hundreds, with no limit imposed. The negative impact of this massive consolidation is felt even in the smallest markets across the country, resulting in fewer voices/opinions on the airwaves. The coveted principle of diversity of ownership in media seems to have fallen by the wayside in the rush to deregulate this industry. This need not be the case.

Since the creation of broadcasting in America, the Commission has placed a heavy emphasis on diversity of ownership of radio stations and had strict rules limiting not only how many stations one company could own but also how many of each type in a market. Without reiterating the many cogent reasons for the original creation of ownership limits, suffice it to say that many negative effects are becoming apparent due to the loosening of these ownership limits, mandated by the Telecommunications Act of 1996. From one AM and one FM station per market ownership cap with 6 stations nationwide, this gradually

increased to 12 stations nationwide and today we have giant corporations owning hundreds of stations nationwide and as many as 10 stations in one market. In many regions where there had been a dozen or more different owners, today, after consolidation, the market may be cornered by as few as three or four owners. Can the Commission do something to put local ownership and local voices back into broadcasting? Yes, by granting the license sought by this application. It will take tremendous resolve on the part of the commissioners to buck the powerful National Association of Broadcasters ("NAB") and several existing station owners who will desire to preserve the status quo, but the Commission must do so in order to carry out its mission. What must be understood is that the benefits of diversity, of having more voices represented, is what is important.

SDPR believes that after it has had an opportunity to broadcast on an experimental basis it will become clear to the Commission that it can establish rules and regulations for the licensing of low power FM broadcast service possibly similar to those used for low power television service. The low power television service program has served a useful purpose in promoting diversity of ownership in the media, a variety of program choices for the public, and cost effective outlets for advertising by small business owners. Localism has been the key to success for low power television by serving small communities or niche segments of audiences within large metropolitan areas that are under-served or unserved by the larger full service radio stations that cover several counties. It is this lack of localism in radio, due in large part to changes in Commission rulings (deregulation), that has caused a profound and permanent change in the broadcast landscape over the last several years. It is time for the pendulum to swing back to the long-held principles of localism and diversity in ownership in broadcasting. In recent years, these well-founded principles seem

to have vanished. Although it is too late to undo the damage done by deregulation, positive action on this application would be a significant step in restoring power to small business people.

If the Commission had rules that made it easier for a person of limited financial means to acquire a broadcast license, there would be no need for this application. That not being the case, San Diego Public Radio is attempting to show the Commission and others that a low power FM radio station can operate in a manner that will:

1. Make more efficient use of the FM band without interference.
2. Increase diversity of ownership of stations including minority ownership.
3. Give the listening public varied and better listening choices.
4. Provide for affordable radio advertising to small businesses, even in large markets.
5. Create jobs nationwide at new stations, as well as for equipment manufacturers and suppliers.

Section 257 of the Telecommunications Act of 1996 relating to lowering barriers to entry in broadcasting by small businesses should provide the ammunition needed to grant the license requested in this application:

(a) The Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulation pursuant to its authority under this act (other than this section), market entry barriers for entrepreneurs and small businesses in the provision of ownership of telecommunications services.

(b) NATIONAL POLICY - in carrying out subsection (a), the Commission shall seek to promote the popular purposes of this act favoring diversity of media voices, vigorous economic competition and technological advancement, and promotion of the public interest, convenience and necessity.

While the Telecommunications Act of 1996 provided the mechanism that allowed

the massive consolidation of the radio industry by large corporations, it also provided for the elimination of barriers to entry into broadcast ownership for individuals and small business as detailed above. It is clear from the wording of the Act that Congress intended to provide for small business as well as something for large corporations. We now request that the Commission act, with the authority granted it under the Act, to eliminate barriers to entry to individuals and small businesses. Granting of this application falls squarely in line with this mandate from Congress.

Since the passage of the Telecommunications Act of 1996, the percentage of ownership of media outlets by minorities and women has actually dropped. As the Commission struggles with how to improve the minority ownership of full power radio and television stations under the strict limits imposed by the Courts, granting this application may prove to be a method for significantly increasing minority ownership in a rapid, widespread, and meaningful manner. By employing local ownership restrictions, involving a local ownership requirement of proof of primary residence within 50 miles of the proposed station's tower cite, only local owners will have the chance to apply for these licenses.

When one talks of barriers to entry into radio station ownership, the discussion should include not only small markets where barriers to entry are lower, but also large markets in metropolitan areas where most people live. If SDPR is allowed to broadcast and can prove its ability to broadcast in an urban area with only 400 Mhz distance between its adjacent stations, this will open up further opportunities for local owners in all markets, nationwide. The structure of rules currently in place, and the effects of consolidation of radio stations nationwide, have made it virtually impossible for all but the wealthiest

individuals and large corporations to enter into broadcast ownership in the major metropolitan areas, and increasingly even in the small markets as well. Indeed, some articles in trade publications suggest that large corporations are almost done consolidating the large markets and are now beginning to concentrate on the medium, small, and very small markets. This activity further squeezes out the "little guy." Given the decision of Congress to use spectrum auctions as a way of awarding new broadcast licenses in the future, there appears to be no hope whatsoever for individual entrepreneurs and small businesses to acquire full power radio station licenses.

Estimates in the trade press of citizens taking to the airwaves illegally have ranged from hundreds to thousands, and the truth is, no one really knows the extent of these activities. With equipment being readily available at low cost the danger of "pirate radio" getting out of control across the country is real. With each Commission action against a pirate, more pirates seems to spring up as if in retaliation. Indeed some of the fringe element of this group believe they are engaged in an all out war with the Commission. With limited Commission resources devoted to keeping the lid on this pressure cooker, and with the NAB openly declaring war on pirate radio in the press, this is not a situation that would appear to have a happy ending. SDPR believes that by granting it an experimental/interim license to provide its low power FM service, it can prove to both the pirates and the Commission that low cost low power FM radio is viable.

Diversity in media ownership contributes to the number of voices on the air. With the concentration of media comes the danger of a much more limited outlook and airing of views. The system that currently exists is one in which only the wealthy can afford to speak. During the height of Communism in Russia, one could listen to any radio station

he chose, as long as it was Radio Moscow. By diminishing the diversity of ownership in media throughout America, we are on a slippery slope toward an unpleasant end. Allowing SDPR to broadcast its low power FM service and prove it is viable, will demonstrate that this type of broadcasting is accessible to those with limited resources.

The Commission has a mandate under section 307b of the Communications Act of 1934, as amended to provide a service as is applied for by SDPR:

(b) Allocation of facilities in considering applications for licenses, and modifications and renewals thereof, when and insofar as they demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation of power among the several states and communities as to provide a fair, efficient, and equitable distribution of the radio service to each of the same.

It could be argued that current Commission rules do not live up to the mandate of section 307b for the fair, efficient and equitable distribution of radio service to each state and community [community being defined as people that comprise the community instead of the limited definition of community as merely a geographical reference]. Indeed, section 307b makes reference to "applications for licenses." Communities do not apply for licenses, people do. Although the number of stations in each community may be the same, common ownership severely limits the number of voices. Thus it could be fairly argued that the consolidation of radio that has taken place is contrary to the mandate given in section 307b for fair, efficient and equitable distribution of radio service.

IV.

DETAILED DESCRIPTION OF LP FM SERVICE AS PROPOSED

1. Type and purpose of operation: Low Power [100 Watts or less] FM at 96.9 Mhz.
2. Place of operation: San Diego, California.

3. Date of operation: To be determined.
4. Detailed description of equipment to be used:

TRANSMITTER:

Manufacturer: Bext; Model TEX100
Rated Output Power 5 to 100 watts
RF Output Connector "N" type female
RF Output Impedance 50 ohms
Frequency Range 87.5 to 108 Mhz
Frequency Programmability: direct from panel in 10 khz increments
Frequency Stability: better than +/- 500 Hz
Modulation type (emission): direct carrier frequency modulation
Spurious & Harmonic suppression meets or exceeds all FCC requirements
Asynchronous AM signal-to-noise ratio: 65 db below reference carrier with 100% amplitude modulation at 400 Hz without de-emphasis, no FM modulation present
Synchronous AM signal-to-noise ratio: 55 db or better below reference carrier with 100% amplitude modulation at 400 Hz without de-emphasis, FM modulation +/- 75 khz at 400 Hz
Transient intermodulation distortion less than 0.1% measured with a 3.18 KHz square wave and a 15 KHz sine wave at 100% modulation (typical 0.05%)
Pre-emphasis is 75 microsecond

The frequency tolerance is maintained by a crystal controlled oscillator in a phase locked loop circuit.

ANTENNA:

Manufacturer: Bext; Model BLD/1
Type: Broadband FM Dipole
Frequency Range 87.5 to 108 Mhz
Bandwidth 20 Mhz
Impedance 50 ohms
Connector "N" type female
Power rating 500 watts max.
VSWR: < 1.3
Polarization Vertical
Gain Odb (referred to half-wave dipole)
H Plane 180 degrees
V Plane 70 degrees
Front-to-back ratio 7 db
Materials: anti-corrosive aluminum
Weight: 8.8 lbs

Dimensions: 55" x 33" x 2"

5. Frequency desired: 96.9

6. The method by which frequency is determined: Minimize likelihood of interference to adjacent stations.

V.

CONCLUSION

The LPFM radio broadcasting service applied for by SDPR would provide the opportunity for individual citizens and small groups of citizens to operate radio broadcast services. This would expand the variety of subjects and types of entertainment presented. New musical groups could present their products to society and more diverse social and political options could be discussed. Specialized programming would arise addressing specific subjects and activities such as golfing, flying, archery, energy conservation, ecology, animal rights, etc. The ties of community identity would be fostered in urban neighborhoods, rural towns, and other communities which are currently too small to garner much attention from mainstream, ratings driven media.

The LPFM radio broadcasting service would also provide direct opportunity for citizen involvement in broadcasting. This is in contrast to the current situation where broadcasting is limited to wealthy corporations. The only direct citizen access provided currently on broadcast radio is an occasional minute or two on talk radio. No mainstream media would be displaced by LPFM radio, but such media would be supplemented. Further, through competition from LPFM radio, mainstream media might have an incentive to become more responsive to new ideas.

LPFM radio service will be shaped by two forces which will drive it in new

directions. First, because LPFM radio serves areas which range in size from small to tiny, it must be highly responsive to the specific communities in which it is located. LPFM radio providers cannot chase after mass markets because they lack the economic and/or technological resources to capture such markets. They must play to the niche markets in each community.

An exception to the general inability of LPFM radio stations to compete for mass markets may be that LPFM radio stations could enter mass markets by growing their own. If a niche market with potential for mass appeal is located, but which is too risky or controversial or experimental to attract conventional radio stations, LPFM radio stations could prosper through such innovation. Additionally, because LPFM radio stations have small service areas and very modest equipment requirements, it will have correspondingly small operating revenue requirements. As a result, LPFM radio service will not require a large and steady flow of advertising dollars. LPFM radio stations will be free to experiment with new ideas and expand community dialogue without running the financial risks that a larger station might incur. LPFM radio can help, in a small way, to reverse the situation caused by the Telecommunications Act of 1996 by creating opportunities for upward mobility. LPFM radio can be established with relatively inexpensive equipment, other minimum capital requirements, and a level of technological expertise that is fairly easy for most people to acquire. As noted previously, such stations can be kept on the air with very modest operating revenues. Therefore, the barriers to market entry are extremely low - which means that the opportunities for motivated entrepreneurs are extremely high. People with low incomes can have a shot at the American dream, particularly if they pool their resources. Thus, LPFM radio can advance the national interest by promoting upward

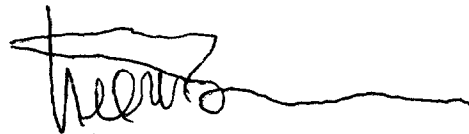
mobility, even among groups who have been finding it difficult to obtain financing, and by increasing the pool of American workers who have entrepreneurial and technological experience. In addition, there would surely be ripple effects in other fields such as music and the arts, where writers and performers who previously lacked an audience might suddenly find one.

VI.

REQUESTED ACTION

It is respectfully requested that the Commission grant SDPR's request and issue an experimental/interim license for the operation of its LPFM radio station in accordance with the specifications set forth in this application. The actions requested by this application can be quickly and easily implemented by the Commission with minimum effort. Any negative effects are outweighed significantly by the advantages, namely diversification of ownership in media and all the inherent benefits that accompany this lofty goal. The granting of this application will clearly serve the public interest, convenience and necessity.

Respectfully submitted,
San Diego Public Radio, Inc.

A handwritten signature in black ink, appearing to read 'Mel Buxbaum', with a long horizontal flourish extending to the right.

Mel Buxbaum, President

DATED: April 29, 1999